STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PATRICK ALAN STARK,

Defendant-Appellee.

UNPUBLISHED
October 20, 2005

No. 255963
Oakland Circuit Court
LC No. 2003-191662-FH

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from orders ruling a police search unconstitutional and thus suppressing evidence seized, and dismissing the case against defendant. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The police searched the home of defendant and his parents as part of an investigation into a series of recent burglaries and automobile break-ins. The police seized from defendant's bedroom several items that had been reported stolen. Defendant was in custody at the time. The police had no warrant to conduct the search, but asked defendant's parents for permission to search, informing them that if permission was denied the police would return with marked squad cars and uniformed officers, and would break into the home if need be. Both parents testified at the evidentiary hearing that they did not feel empowered to withhold their consent.

The trial court concluded both that defendant's parents did not consent to having their home searched in general, and that the police did not have a reasonable belief that the parents had authority to consent to the search of defendant's room in particular. Plaintiff challenges both prongs of the trial court's ruling.

Evidence obtained in the course of a violation of a suspect's rights under the Fourth Amendment of the United States Constitution[1] is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997). "Searches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions." *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1

[1] See also Const 1963, art 1, § 11.

(1999). Among these "is a search conducted pursuant to consent." *Id.* at 294. A court deciding the question of consent must consider all the circumstances to determine whether consent was freely given. *Id.* "The presence of coercion or duress normally militates against a finding of voluntariness." *Id.* An objective standard governs the inquiry. *People v Frohriep*, 247 Mich App 692, 703; 637 NW2d 562 (2001).

In reviewing a trial court's decision following a suppression hearing, we review factual findings for clear error, but review the legal conclusions de novo. *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999).

When citing consent to justify an unwarranted search, the prosecutor bears the burden of showing that the consent was "'unequivocal, specific, freely and intelligently given.'" *People v Farrow*, 461 Mich 202, 205; 600 NW2d 634 (1999), quoting *People v Kaigler*, 368 Mich 281, 294; 118 NW2d 406 (1962). Consent must be shown by "'clear and positive testimony and be shown to have been made without duress, coercion, actual or implied.'" *Id*.

In this case, the trial court concluded that "there was implied coercion used by the officers," such that "the parents had no choice but to comply with the request to search, or risk an all-out police scene at their home with their door being broken down." Plaintiff does not challenge the court's factual conclusion that the police threatened a full-scale application of police tactics upon returning with a warrant, but argues that this was an accurate statement of the lawful possibilities, and thus not coercive pressure.

"The purpose of the exclusionary rule is to deter police misconduct." *People v Goldston*, 470 Mich 523, 526; 682 NW2d 479 (2004). We agree that accurately describing the legal and practical consequences of a course of action cannot ordinarily be considered misconduct. However, to present the prospect of a warranted search as if it were inevitable, and to characterize the form it would take in the most disagreeable of terms (multiple squad cars, forcible entry), is to emphasize the most extreme potential consequences of lawful procedure as a pressure tactic. In this case, the police, however politely, requested consent while at the same time representing that a search was inevitable and making clear that the consequences of denying it would be very unpleasant. Presenting the worst-case scenario as if it would be the inevitable result of withholding consent is stepping from benign information delivery into coercive pressure. Because police officers resorting to such pressure are not respecting the "right of the people to be secure in their persons, houses, papers, and effects," US Const, Am IV, the trial court did not err in applying the exclusionary rule to suppress the fruit of a poisonous tree.

We also conclude that the court did not err in concluding that the parents had no authority to consent to a search of defendant's bedroom as that conclusion was supported by defendant's parents' testimony.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder